

BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

RECEIVED  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Assessment and Collection )  
of Regulatory Fees for )  
Fiscal Year 1995 )

MD Docket No. 95-3

To: The Commission

**MOTION FOR LEAVE TO FILE SUPPLEMENTAL REPLY COMMENTS**

Columbia Communications Corporation ("Columbia"), by its attorneys, hereby moves the Commission for leave to file its accompanying Supplemental Reply Comments in response to certain arguments raised for the first time on reply by Comsat Corporation ("COMSAT") and GE American Communications ("GE") in the above-captioned proceeding.

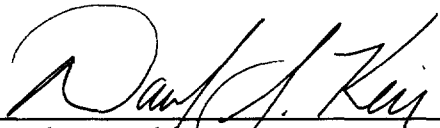
In its reply comments, COMSAT contends that it has been exempted by Congress from the obligation to pay its fair share of FCC regulatory fees. GE asserts, in its own reply comments, that Columbia seeks special treatment from the FCC with respect to fee payments. Neither COMSAT nor GE have made these claims previously in the instant proceeding, and Columbia therefore has not had an opportunity to address them.

Columbia's filing is limited to a response to the aforementioned claims of COMSAT and GE. Columbia strongly disagrees with their assertions, and requests leave to

file its Supplemental Reply Comments so that the Commission may make its decisions in this proceeding on the basis of a complete factual record. Grant of this Motion is therefore in the public interest.

Respectfully submitted,

COLUMBIA COMMUNICATIONS CORP.

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**CERTIFICATE OF SERVICE**

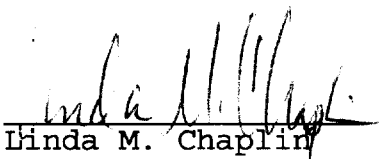
I, Linda M. Chaplin, do hereby certify that true and correct copies of the foregoing "Motion for Leave to File Supplemental Reply Comments" were mailed, first-class postage prepaid, this 20th day of March, 1995 to the following:

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To: The Commission

**SUPPLEMENTAL REPLY COMMENTS OF  
COLUMBIA COMMUNICATIONS CORPORATION**

Columbia Communications Corporation ("Columbia"), by its attorneys, hereby submits supplemental reply comments in the above-captioned proceeding, Assessment and Collection of Regulatory Fees for Fiscal Year 1995, FCC 95-14 (released January 12, 1995) ("NPRM"). Columbia responds here to certain arguments raised for the first time on reply by Comsat Corporation ("COMSAT") and GE American Communications ("GE"). As demonstrated in Columbia's simultaneously filed "Motion for Leave to File Supplemental Comments," there is good cause for the Commission to consider this supplement in order to render decisions in this docket based on a complete factual record.

Columbia addresses two discrete issues. First, Columbia responds to the contention that COMSAT has been somehow exempted by Congress from the obligation to pay its fair share of FCC regulatory fees. COMSAT's citation of references buried in the legislative history of the 1993 Budget Reconciliation Act carries no weight against the letter and declared purpose of the law itself. Even if COMSAT were exempt, however, this would not permit the Commission to impose the high costs of overseeing COMSAT upon the rest of the satellite industry.

Second, Columbia responds to GE's inaccurate assertion that Columbia seeks special treatment with respect to fee payments. In fact, Columbia seeks to find a more reasonable measure for the allocation of satellite fees that will assess licensees in proportion to the burden they place on the Commission's regulatory resources. The approach endorsed by GE would not fairly distribute the burden of regulatory payments upon the geostationary satellite industry. While it might be simple to apply, it would be no more so than the straightforward and far more equitable approach Columbia has proposed.

**I. COMSAT Is Not Exempt From Regulatory Fee Payments Relating To INTELSAT And INMARSAT Activities.**

**A. Exempting COMSAT's Participation In International Satellite Organizations From The Scope Of The FCC's Regulatory Fee Program Is Inconsistent With The Letter And The Intent Of The Act.**

In response to arguments by Columbia and PanAmSat that COMSAT must be held accountable for regulatory costs attributable to Commission oversight of its activities, COMSAT has countered that it is the unique beneficiary of a specific exemption from the FCC fee program accorded "to space stations operated by international organizations subject to the International Organizations Immunities Act [citation omitted]."<sup>1/</sup> As COMSAT itself must admit, however, this alleged "exemption" appears nowhere in the 1993 Budget Reconciliation Act, which added Section 9 to the Communications Act (hereafter, the "Act"), and nowhere in the Congressional Reports relating to the enactment of Section 9. Instead,

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<sup>1/</sup> COMSAT Reply Comments at 2 (citing H.R. Conf. Rep. No. 207, 102d Cong. 1st Sess. 26).

the language cited is contained in the House Report addressing a prior piece of legislation, which was passed by the House of Representatives alone during the preceding Congress. The only evidence suggesting that the cited report is of any relevance in interpreting Section 9 of the Act is a vague statement in the Conference Report that "[t]o the extent applicable, the appropriate provisions of the House Report (H.R. Rept. 102-207 are incorporated herein by reference."<sup>2/</sup> This is far too slender a reed upon which to exempt COMSAT from payments relating to its participation in INTELSAT and INMARSAT.

First, the statement in the Conference Report is too vague to carry forward legislative history from a prior bill that purports to create a specific exemption from the explicit terms of the Act itself. There is simply no guidance concerning the extent to which the 1991 House Report is "applicable" to the 1993 adoption of Section 9 of the Act, or which of its many provisions are considered "appropriate."

Second, it is otherwise clear that the language from the 1991 report is neither "applicable" nor "appropriate" because its terms conflict with both the letter and the intent of the law itself. The declared purpose of FCC regulatory fees, after all, is "to recover the costs of [the FCC's] enforcement activities, policy and rulemaking activities, user information services, and international activities." 47 U.S.C. 159(a) (1993). Even COMSAT does not assert that it is not the source of significant FCC costs in these areas, and no part of the Act itself suggests that COMSAT should not be subject to fee payments.

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<sup>2/</sup> H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess. 499 (1993), reprinted in 1993 U.S.C.C.A.N. 378, 1188.

Therefore, even if there were an explicit incorporation by reference of the exact language cited by COMSAT, there is no language in the Act itself to give it effect. As the Supreme Court confirmed just last term, in no case has it "given authoritative weight to a single passage of legislative history that is in no way anchored in the text of the statute."<sup>3/</sup> The Court went on to emphasize that legislative history may only be used to clarify the meaning of ambiguous statutory provisions, and not to add additional terms to a statute.<sup>4/</sup> Here, there is no provision of the Act that makes reference to any special treatment for COMSAT's participation in INTELSAT and INMARSAT.

Moreover, as if this fact were not decisive in itself, the Act does include a specific enumeration of exceptions to its applicability, which makes no mention of international satellite organizations (or of COMSAT). See 47 U.S.C. § 159(h) (1993). Congress was thus disposed to create some exceptions to the regulatory fee requirement, but chose not to create any exemption for INTELSAT or INMARSAT satellites. The federal courts have long recognized that, under the doctrine "expressio unius est exclusio alterius," if a statute specifies exceptions to its general application, other exceptions not explicitly mentioned are to be excluded.<sup>5/</sup>

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<sup>3/</sup> Shannon v. United States, \_\_\_ U.S. \_\_\_, 114 S. Ct. 2419, 2426 (1994).

<sup>4/</sup> Id. (quoting International Bhd. of Elec. Workers, 814 F.2d 697, 712 (D.C. Cir. 1987) ("courts have no authority to enforce [a] principl[e] gleaned solely from legislative history that has no statutory reference point")).

<sup>5/</sup> See, e.g., United States v. Wells Fargo Bank, 108 S.Ct. 1179, 1183 (1988); Department of the Air Force v. Federal Labor Relations Authority, 877 F.2d 1036, 1041 (D.C. Cir. 1989); United States v. Goldbaum, 879 F.2d 811, 813 (10th Cir. 1989).

Finally, as GE notes in Reply Comments, even if the language cited by COMSAT were the law, it does not endow COMSAT with any right to special treatment in the collection of regulatory fees because it makes no mention of COMSAT, and directly applies only to the international organizations themselves. See GE Reply Comments at 11. Accordingly, to the considerable extent that the FCC uses resources to supervise COMSAT's participation in these organizations, the Act and the legislative history are devoid of language derogating from the Commission's authority to levy fees on COMSAT to defray these costs.

If the Commission concludes that it cannot impose fees on COMSAT for its participation in INTELSAT and INMARSAT based on the number of space stations these organizations have in orbit, then it should nonetheless employ its authority under Section 9(b)(3) of the Act to create an alternate means of recovering from COMSAT its costs attributable to COMSAT's activities. See 47 U.S.C. § 159(b)(3) (1993). There is no legitimate argument, and COMSAT has not even attempted to construct one, that COMSAT should not pay for its share of the FCC's costs.

**B. If The Commission Determines That It Will Not Charge COMSAT Regulatory Fees, Then It Must Remove The Regulatory Costs Attributable To COMSAT From The Total Cost Basis For Fees Paid By Others.**

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If the Commission ultimately determines that it will not collect regulatory fees from COMSAT, then it must deduct the cost of COMSAT-related regulatory oversight from the total fee burden placed on other licensees. To do otherwise would be inconsistent with the stated purpose of the Regulatory Fees Act, to "recover" the costs of regulating licensees.

Instead, it would tax U.S. domestic and international separate satellite systems for the benefit of COMSAT, which would, in effect, be subsidized by the payments.

Moreover, if the Commission determines that it lacks the authority to impose regulatory fees upon COMSAT, it must request that Congress rectify such an omission. Section 9 of the Act cannot be said to have achieved its goal of placing the monetary burden of FCC regulation upon the regulated entities until COMSAT is assessed for the very substantial Commission activities undertaken in its behalf. At a time when this Commission, the Congress and the Administration are considering ways to open up international telecommunications to greater competition, including changes in the international privileges and immunities accorded to INTELSAT and INMARSAT, it is inappropriate for the U.S. Government to extend protected status to these entities, or to their U.S. signatory.

**II. Contrary to GE's Characterization, Columbia Has Not Proposed That It Receive Special Treatment, But Simply That Transponder Capacity Be Used As An Alternative, More Equitable Means of Assessing Satellite Regulatory Fees.**

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Although GE makes sound points in its Comments and Reply Comments concerning the regulatory status of COMSAT, GE is wholly incorrect in asserting that Columbia seeks special treatment based on its use of only a portion of the capacity on the TDRSS satellites. See GE Reply Comments at 12-15. On the contrary, Columbia's proposal -- to assess satellite fees according to the number of transponders or transponder-equivalent units -- provides a much better measure of a licensee's responsibility for FCC administrative

costs and its ability to generate revenue than the per-space station method endorsed by GE.

See Columbia Comments at 10-12.

GE's criticism of Columbia's proposal simply ignores reality. It is inaccurate to suggest that treating all satellites (or satellite authorizations) identically is either "established" as the means of fee assessment or "comports as nearly as practicable with the costs of regulation . . . ." GE Reply Comments at 13. In fact, not all satellites are identical, and there is no necessary connection between the mere number of satellite authorizations held by a licensee and its regulatory burden upon the FCC.

While the actual cost of regulation attributable to any licensee varies from year to year, each operator benefits from the Commission's regulatory role in sustaining the industry in close proportion to its capacity and not to the number of licenses it holds.<sup>6/</sup> It is only proper that the Commission base its fees on some measure that correlates with a licensee's ability to generate income through utilization of its FCC-authorized facilities. Indeed, the Act requires that fees be

. . . adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities, including such factors as service area coverage, shared use versus exclusive use, and other factors that

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<sup>6/</sup> The assessment of regulatory fees based solely on the number of FCC authorizations held would also run counter to the approach the Commission has used in other services. In the mass media area, for example, broadcast stations are not charged identical fees; instead, fees vary according to a scale based on the size of the station. See NPRM, FCC 95-14, slip op. at ¶ 29 and Appendix B. There is no justification for not introducing a similar level of fairness into the fee payment schedule for satellite service providers.

the Commission determines are necessary and in the public interest.

47 U.S.C. § 159(b)(1)(A) (1993) (emphasis added). The most readily identifiable way of taking such factors into account is to base per satellite regulatory fees on the number of usable transponders or transponder-equivalent units covered by each authorization.<sup>7/</sup>

Many space stations carry full arrays of both C-band and Ku-band transponders with full frequency reuse in each band, totalling up to forty-eight 36 MHz-equivalent transponders. On the other hand, "lightsats" may have only twelve 36 MHz-equivalent transponders per satellite. The number of transponders or transponder-equivalent units governs the number of customers that a licensee can serve, and in turn, dictates its ability to generate income. Just as significantly from the Commission's perspective, dual-frequency-band satellites with large payloads require substantially more extensive FCC engineering review. Because the number of transponders or transponder-equivalent units per satellite is both easily calculable and approximates the regulatory benefit that accrues to the licensee, Columbia again urges the Commission to use this figure in assessing geostationary satellite regulatory fees.<sup>8/</sup> The initial "per satellite" charge should be regarded as a baseline for stations with twenty-four 36-MHz transponders, with those of greater capacity paying proportionately more, and those of smaller capacity paying proportionately less.

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<sup>7/</sup> See Columbia Comments at 11 & n.7.

<sup>8/</sup> Columbia's proposal would not in any way reduce the total amount of funds that the Commission can collect from geostationary satellite licensees by means of its regulatory fees; it would only redistribute the burden of paying those fees more equitably to reflect the regulatory expenditures that each licensee makes necessary.

Contrary to GE's claims, Columbia's proposal to base fees on each satellite's capacity is no more complex than charging fees based on the number of stations alone.<sup>9/</sup> At the same time, it is dramatically more efficient in placing the monetary costs of regulation where they belong. This approach would not single Columbia out for some unwarranted special treatment; rather, it would merely give effect to the Act's specific instructions that the Commission adjust fees so that they are reasonably related to the benefits accorded the payor, and correct for the differences in "shared use versus exclusive use." 47 U.S.C. § 159(b)(1)(A) (1993).<sup>10/</sup>

Accordingly, the Commission should not arbitrarily handicap space segment providers with smaller system capacities by, in effect, forcing them to subsidize entities with much larger satellites. The rough assessment of fees set forth in the Act is a reasonable baseline, but the Commission must adjust it in order to fulfill the Act's over-arching goal of appropriately placing the costs of regulation on the regulated entities responsible for these costs. Columbia has long challenged the current structure's identical treatment of all satellites, and the consequent disproportionate impact upon Columbia.<sup>11/</sup> It is only fair

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<sup>9/</sup> GE asserts that third parties purchasing or leasing transponders might be considered liable for FCC regulatory fees. Only FCC licensees can be required to pay these fees. Whether or not space station operators pass along a portion of fees to their users is a purely private, contractual matter.

<sup>10/</sup> In Columbia's particular situation, such an approach would take into account the fact that Columbia does not have access to all of the transponders on the two TDRSS satellites for which it holds authorizations.

<sup>11/</sup> See Columbia's Request for Reduction of Regulatory Fees, filed August 19, 1994. No decision has been rendered on this request.

and reasonable for those companies that are dominant players in the industry to pay their proportionate share of the cost of regulating the industry.

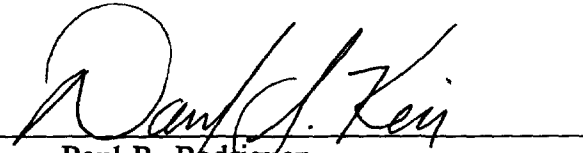
**III. Conclusion**

For the foregoing reasons, Columbia respectfully renews its request that the Commission adjust the regulatory fee payments due from geostationary satellite licensees to reflect inclusion of COMSAT's participation in INTELSAT and INMARSAT, require COMSAT to pay these fees, and base satellite fee calculations upon the number of transponders or transponder-equivalent units instead of the number of authorizations held.

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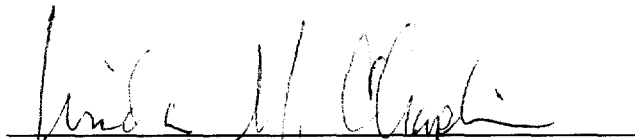
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